

**REMARKS**

Claims 2-26 and 29-36 are pending in the application.

Claims 2-26 and 29-36 have been rejected.

Claims 16, 17, 24, 25, 29 and 35 have been amended, as set forth herein.

Reconsideration of the claims is respectfully requested.

I. **AMENDMENTS TO THE CLAIMS**

Claims 16 and 17 have been amended to recite that the audio options are audio entertainment options, as opposed to options for listening to automated information related to frequently asked questions or other information relevant to the caller's telephone session. For example, as described in the present application, the audio entertainment options may correspond to selections of a music type, a music artist, a song, a radio station, a news broadcast and a weather update. Page 26, lines 23-27. Claim 24 has been amended to recite that monitoring for receipt of an attendant request message is performed during the browser session, as described in the present application. Page 31, line 25 - page 32, line 7. Claims 25 and 29 have been amended such that the softkey option labels comprise at least two of a music choice operation, an alert request operation and a browser request operation, as described in the present application. Page 23, lines 16-30. In addition, Claims 29 and 35 have been amended to correct grammatical errors. Accordingly, no new matter is added by these amendments.

II. REJECTION UNDER 35 U.S.C. § 102

Claims 2-10, 16, 18-20, 24-26, 29-31 and 34-36 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,046,762 issued to Sonesh et al. ("*Sonesh*"). Of these, Claims 2, 8, 16, 24, 25, 29, 30, 34 and 35 are independent. The rejection is respectfully traversed.

A prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. MPEP § 2131; *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990). Anticipation is only shown where each and every limitation of the claimed invention is found in a single prior art reference. MPEP § 2131; *In re Donohue*, 766 F.2d 531, 534, 226 U.S.P.Q. 619, 621 (Fed. Cir. 1985).

Applicant respectfully submits that *Sonesh* fails to disclose, teach or suggest all elements of independent Claims 2, 8, 16, 24, 25, 29, 30, 34 and 35. In rejecting Claim 2, the Office Action argues that *Sonesh* teaches a query "where the MMACD determines through the caller's browser whether the software of the caller's computer is updated" and teaches that "the software downloaded is updated to the caller's computer performs specific applications and therefore, teaches that 'configuring' is for determining the capabilities of the caller's computer (col. 6, lines 9-33)." Office Action, page 3. However, *Sonesh* fails to disclose any passage determining a format for a data information message based on the capabilities of the caller's computer, as recited by Claim 2. Instead, *Sonesh* appears to teach that communication is in the same format for every caller's computer. The caller connection software is downloaded to or updated in each computer in order

to conform the computer's capabilities to the format of any information supplied by the call connection, rather than the format of supplied information being conformed to the computer's capabilities. Col. 6, lines 9-33 and col. 10, lines 52-56.

In contrast, Claim 2 recites that "the call reception logic further operates to query the capabilities of the particular remote telephone station prior to sending the data information message, a format for the data information message being determined based upon the capabilities of the particular remote telephone station." Thus, the claimed call reception logic determines the message format individually for each caller's remote telephone station based on that station's capabilities. Thus, for at least this reason, independent Claim 2 is not anticipated by the cited art. Therefore, Applicant respectfully submits that this rejection should now be withdrawn.

With respect to Claim 8, the Office Action argues that *Sonesh* teaches a "switching device comprising alert request logic (connection manager) that is operable when the remote telephone station is connected to the ACD system (Fig. 1, 110) through the switching device. Furthermore, Sonesh et al. teach in Figure 6 step 640 periodic checks whether an agent becomes available, and if an agent is available, the caller is connected to that agent." Office Action, page 4. However, the Applicant respectfully submits that *Sonesh* fails to disclose alert request activation messages or alert on messages, as recited by Claim 8.

*Sonesh* recites that, "[i]f an agent is not available, the call is placed in appropriate wait queue," and "[i]f the caller selects not to wait for an agent or browse through the information, he may leave a . . . message that will be later handled by an available agent." Col. 7, lines 33-46 and col. 8,

lines 9-21 (emphasis added). The cited portion of *Sonesh* merely recites automatically connecting a caller to an agent once the agent becomes available. Col. 11, lines 3-4. *Sonesh* does not describe either allowing a user to selectively request an alert message when an agent becomes available or sending such a message when the agent becomes available.

In contrast, Claim 8 recites that “the call reception logic further operates to monitor for receipt of an alert request activation message from the particular remote telephone station in response to the alert request option; and, if the call reception logic receives the alert request activation message from the particular remote telephone station, to send an alert on message to the particular remote telephone station when the attendant availability parameter is met.” As described in the present application, when a user selects an alert request option, the user’s remote telephone station is placed in “alert mode and can proceed with normal operations, such as answering/initiating further telephone sessions, until an attendant is available. . . At this point, the user of the remote telephone station is free to initiate/accept other telephone sessions.” Page 27, lines 4-8 and 22-23. Thus, the use of alert request activation messages and alert on messages allows a user to use the telephone station for normal operations while waiting for an attendant, instead of requiring the user to choose between waiting for an attendant without the normal use of the telephone station and leaving a message to be handled at a later time. Thus, for at least this reason, independent Claim 8 is not anticipated by the cited art. Therefore, Applicant respectfully submits that this rejection should be withdrawn.

Similar to independent Claim 8, independent Claims 30 and 35 also recite “alert request logic [that] operates to monitor for receipt of an alert request activation signal,” and independent Claim 34 recites “monitoring for receipt of an alert request activation signal.” Therefore, for the reasons discussed above in connection with Claim 8, independent Claims 30, 34 and 35 are also patentable over the cited art.

In addition, Claim 30 recites that the alert request logic operates, “if the alert request activation signal is received, to store a directory number corresponding to the remote telephone station, to disconnect the remote telephone station from the switching device, to monitor for an attendant ready signal from the ACD system and, if the attendant ready signal is received, to initiate a telephone session with the remote telephone station using the stored directory number in order to connect the remote telephone station and the ACD system.” Similarly, Claim 34 recites a method comprising “if the alert request activation signal is received, storing a directory number corresponding to the remote telephone station; disconnecting the telephone station from the computing device; monitoring for an attendant ready signal from the ACD system; and, if the attendant ready signal is received, initiating a telephone session with the telephone station using the stored directory number in order to connect the telephone station and the ACD system.” Also, Claim 35 recites that the alert request logic operates, “to periodically send a recorded voice message to the ACD system indicating how to send an attendant ready signal to the alert request logic, to monitor for an attendant ready signal from the ACD system and, if the attendant ready signal is received, to initiate an alert operation on the telephone station.”

Applicant respectfully submits that *Sonesh* fails to disclose these elements of Claims 30, 34 and 35. Thus, for these reasons also, independent Claims 30, 34 and 35 are patentable over the cited art. Therefore, Applicant respectfully submits that these rejections should be withdrawn.

With respect to Claim 16, the Office Action argues that *Sonesh* teaches the claimed audio options and audio signals. However, the cited portions of *Sonesh* refer to “automated information via voice access, Interactive Voice Response (“IVR”), and/or data access via the WWW access,” and an “audio path. . . created between the caller and the agent.” Col. 6, lines 55-58 and col. 8, lines 3-9. Thus, the audio mentioned in *Sonesh* relates to automated information and to an audio path that allows communication between a caller and an agent. There is no disclosure in *Sonesh* with regard to audio entertainment options presented to the caller that allow the caller to select between multiple forms of audio entertainment while waiting for an agent.

In contrast, Claim 16, as amended, recites “the data information message comprises a plurality of audio entertainment options,” and “wherein the call reception logic further operates to monitor for receipt of one of a plurality of audio option activation messages from the particular remote telephone station, each of the audio option activation messages corresponding to a selection of a particular one of the audio entertainment options; and, if the call reception logic receives one of the audio option activation messages from the particular remote telephone station, to send audio signals associated with the received audio option activation message to the particular remote telephone station.”

Thus, as described in the present application, the claimed audio options are audio entertainment options, as opposed to options for listening to automated information related to frequently asked questions or other information relevant to the caller's telephone session. For example, the audio entertainment options may correspond to selections of a music type, a music artist, a song, a radio station, a news broadcast and a weather update. Specification, page 26, lines 23-27. Thus, for at least this reason, independent Claim 16, as amended, is not anticipated by the cited art. Therefore, Applicant respectfully submits that this rejection should be withdrawn.

With respect to Claim 24, the Office Action asserts that *Sonesh* teaches that "the caller browses data information independent of a connection request because the caller might not need agent assistance (col. 6, lines 14-20 and 28-34)." Office Action, page 6. However, the passages of *Sonesh* cited by the Office Action refer to caller connection software that may "provide the caller with status information" and that "provides for remote control of the caller's browser." Col. 6, lines 14-20 and 28-34. As to allowing a caller to browse, *Sonesh* merely teaches that, "[w]hile holding, the caller can browse through information and screens available to him at the call center WWW site or the global Internet." Col. 10, lines 62-65 (emphasis added). *Sonesh* fails to disclose a caller browsing before inputting service request information and being placed on hold to wait for an available agent. Col. 10, lines 36-39 and 62-65.

In contrast, Claim 24, as amended, recites call reception logic that operates "to receive call initiation signals from a particular one of the remote telephone stations; to initiate a browser session with the particular remote telephone station such that the particular remote telephone

station can access data information within a browser format; to monitor for receipt of an attendant request message being sent from the particular remote telephone station during the browser session.” Thus, the remote telephone station may simply employ a browser to access data information made available in response to a call without being queued for an attendant, then initiate an attendant request while viewing the data information. Specification, page 31, line 25 - page 32, line 7. Thus, for at least this reason, independent Claim 24 is not anticipated by the cited art. Therefore, Applicant respectfully submits that this rejection should be withdrawn.

With respect to Claim 25, *Sonesh* does not recite that softkey option labels are sent to the initiating telephone within a data message if an attendant is not available. In rejecting this claim, the Office Action asserts that “the caller’s computer is configured with application software (col. 6, lines 20-33), and the applications include ‘initiating’ and ‘terminating’ commands for different applications. These commands are inherently soft keys. The Newton’s Telecom Dictionary by Harry Newton 8th Expanded & Updated Edition page 950. . . does provide information to further show that Sonesh’s commands are inherently soft keys.” Office Action, page 6. As an initial matter, the portions of *Newton’s Telecom Dictionary* attached to the final Office Action do not establish that reference as prior art to the subject application. In addition, *Newton’s Telecom Dictionary* is not of record in the subject application and is not identified in the grounds for rejection of the subject claim.

Still further, multiple references may be cited in anticipation rejection only where the secondary reference is employed (1) to prove that the primary reference contains an enabling



disclosure, (2) to explain the meaning of a term used in the primary reference, or (3) to show that a characteristic not disclosed in the primary reference is inherent. MPEP § 2131.01. Merely establishing knowledge of softkey option labels by those skilled in the relevant art is not a permissible use of multiple references in an anticipation rejection. Finally, the test of anticipation is not satisfied by merely establishing knowledge of softkey option labels by those skilled in the relevant art; rather, disclosure of every element of a claimed invention in a single reference, arranged identically as they are in the claims, is required to establish anticipation. Sonesh does not describe including softkey option labels in a data information message sent to a call-initiating remote telephone station when the attendant availability parameter is not met.

Furthermore, Claim 25 has been amended to recite that the call reception logic operates “to send at least one data information message including softkey option labels to the particular remote telephone station via the packet-based network, the softkey option labels comprising at least two of a music choice operation, an alert request operation and a browser request operation.” Because *Sonesh* fails to disclose sending a data information message with softkey option labels, Applicant respectfully submits that *Sonesh* necessarily also fails to disclose sending a message with softkey option labels that comprise at least two of a music choice operation, an alert request operation and a browser request operation, as recited by Claim 25. Thus, for at least these reasons, independent Claim 25 is not anticipated by the cited art. Therefore, Applicant respectfully submits that this rejection should be withdrawn.

Similar to independent Claim 25, independent Claim 29 has been amended to recite “sending at least one data information message containing softkey option labels to the remote telephone station via the packet-based network, the softkey option labels comprising at least two of a music choice operation, an alert request operation and a browser request operation.” Thus, for the reasons discussed above in connection with Claim 25, independent Claim 29 is also patentable over the cited art. Therefore, Applicant respectfully submits that this rejection should be withdrawn.

Dependent Claims 3-7, which depend from independent Claim 2, dependent Claims 9-10 and 36, which depend from independent Claim 8, dependent Claims 18-20, which depend from independent Claim 16, dependent Claim 26, which depends from independent Claim 25, and dependent Claim 31, which depends from independent Claim 30, are also patentable over the cited art because they include the limitations of their respective base claims and add additional elements that further distinguish the art. Therefore, Applicant respectfully submits that these rejections should be withdrawn.

### III. REJECTION UNDER 35 U.S.C. § 103

Claims 11-15, 17, 21-23, 32 and 33 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Sonesh* in view of U.S. Patent No. 5,884,032 issued to Bateman et al. (“*Bateman*”). The rejection is respectfully traversed.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. MPEP § 2142; *In re Fritch*, 972 F.2d 1260, 1262,

23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992). The initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention is always upon the Patent Office. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984). Only when a *prima facie* case of obviousness is established does the burden shift to the applicant to produce evidence of nonobviousness. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). If the Patent Office does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of a patent. *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Grabiak*, 769 F.2d 729, 733, 226 U.S.P.Q. 870, 873 (Fed. Cir. 1985).

A *prima facie* case of obviousness is established when the teachings of the prior art itself suggest the claimed subject matter to a person of ordinary skill in the art. *In re Bell*, 991 F.2d 781, 783, 26 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1993). To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed invention and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. MPEP § 2142.

Dependent Claims 11-15, which depend from independent Claim 8, dependent Claims 17 and 21-23, which depend from independent Claim 16, and dependent Claims 32 and 33, which depend from independent Claim 30, are patentable over the cited art because they include the limitations of their respective base claims, which are patentable as discussed above in connection with the Section 102 rejections, and add additional elements that further distinguish the art. Therefore, Applicant respectfully submits that these rejections should be withdrawn.

#### IV. CONCLUSION

As a result of the foregoing, the Applicant asserts that the remaining Claims in the Application are in condition for allowance, and respectfully requests an early allowance of such Claims.

If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at *rmccutcheon@davismunck.com*.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Davis Munck Deposit Account No. 50-0208.

Respectfully submitted,

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